IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4489 of 2005
Date of Order : 17/11/2007

Sohan Singh & Ors. VS. Sukhwinder Singh & Anr.

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Mr.R.S.Aulakh, Advocate for the appellants.
Mr.Dhirender Chopra, Advocate for respondent Nos.1 & 2.

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The defendants are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court whereby suit of the plaintiffs for permanent injunction restraining the defendant-appellants from interfering into possession of the land measuring 7 kanals 18 marlas was decreed.

It is the case of the plaintiffs that Kartar Singh, father of the plaintiffs, took the suit land on lease about 30 years back from the Punjab Wakf Board (hereinafter referred to as the Wakf Board) and the lease money was being paid regularly. The plaintiffs asserted that they used to help their father in cultivation of the suit land and the name of the father of the plaintiffs, Kartar Singh figured in the revenue record. Kartar Singh has since died and that during his life time, he executed a valid Will in favour of the plaintiffs and the plaintiffs are in possession of the suit land as successor-in-interest of Kartar Singh. It was also pleaded that they have approached the Wakf Board for getting the suit land on lease, but the Wakf Board authorities insisted for granting the lease in favour of all the legal heirs of Kartar Singh. Whereas, the plaintiffs applied to grant the lease in their favour on the basis of Will, therefore, the lease could not be granted by the Wakf Board in favour of the plaintiffs.

The defendants has asserted in the written statement that Kartar Singh was not the lessee at the time of his death and that since the year 1997, his lease was not renewed nor he paid any amount to the Wakf Board. Since the defendants applied for grant of lease, the Wakf authorities granted lease in favour of the defendants for the years 2002-2003 and 2003-2004 as the defendants have in fact, deposited the lease money as well as donation.

The learned trial Court found that it was the father of the plaintiffs who was inducted as lessee by the Wakf Board. The defendants have already paid lease money to the Wakf Board. It is incumbent upon the plaintiffs to implead the Punjab Wakf Board, who is admittedly owner of the suit property, and to produce the relevant record whereby the possession of the suit property was taken from the plaintiffs. The learned trial Court considered the *Patta* order dated 29.7.2003 duly signed by the Chief Executive Officer of the Wakf Board in respect of grant of lease in favour of the defendants, as well as order dated 20.2.2004, Exhibit D-1, passed by the Naib Tehsildar, Dharamkot correcting the khasra girdawari consisting entry in the name of the plaintiffs. The Court found that the lease in favour of defendant Nos.2 & 3 is legal and authorized and therefore, the plaintiffs are not entitled to injunction sought for.

However, the learned First Appellate Court reversed the findings recorded by the learned trial Court, holding that the possession of the plaintiffs has not been proved to be discontinued by any revenue record. Even if the plaintiffs have not paid the lease amount, the Court found that the plaintiffs cannot be called in unauthorized possession for non payment of the lease to the Wakf Board. The document Exhibit D-1 does not establish that the possession has been taken over by the Wakf Board from

the plaintiffs. The learned First Appellate Court found that the defendants have not established that they had executed *Kabuliatnama* in favour of the Wakf Board and, therefore, the document Exhibit D-2 is of no consequence.

Learned counsel for the appellants has vehemently argued that for non payment of the lease amount, the tenancy of Kartar Singh stood terminated and the property reverts to the Wakf Board. It is also asserted that the lease by the Wakf Board is year to year and on expiry of the yearly lease, the lease comes out to an end and the Wakf Board is deemed to be in possession of the suit land. However, I do not find any merit in the argument raised by learned counsel for the appellants. Kartar Singh, father of the plaintiffs was admittedly inducted lessee 30 years prior to filing of the suit. There is no document on record to show that the lease was being granted to the predecessor in-interest of the plaintiffs every year by the Wakf Board. Therefore, the plaintiffs as lessee for year to year were enjoying the possession of the land. Said tenancy has not been terminated nor the possession of the land was recovered by the Wakf Board in any manner known to law. Therefore, for mere non deposit of the lease money, it cannot be said that the possession has been taken from the plaintiffs. In the absence of any proof of taking over of possession from the plaintiffs, the plaintiffs would be deemed to be in possession of the suit land. Such is the finding of learned first Appellate Court as well.

Consequently, I do not find any illegality or irregularly in the findings recorded by the learned First Appellate Court which may raise any substantial question of law for consideration of this Court in second appeal. The present appeal stands dismissed in limine.

17.11.2007 (HEMANT GUPTA)
*mohinder JUDGE